

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(225)

CRM-M-34927-2022

Date of decision: - 23.08.2022

Sahil Rathi

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Parveen Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.804 dated 08.12.2020, under Sections 272, 304, 328 and 420 of the Indian Penal Code, 1860 and Section 72-A of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) (Sections 180, 201, 468, 467, 471 and 120-B IPC have been added later on), registered at Police Station Sonipat City, Sonipat.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 21.09.2021 and the charges have not been framed as yet and there are total 29 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. It is pointed out that as per the FIR, the death of husband of the complainant had taken

place on 04.11.2020, whereas, the FIR has been registered on 08.12.2020 i.e., after a delay of 34 days. It is also submitted that even in the said FIR, it had been stated that husband of the complainant had died due to stomach illness and it is only thereafter, after the postmortem had been conducted that the complainant had verified at her own level and found that it was Saurab, Gaurav, Naresh Kumar alias Pappi and Pushpa, who had sold the illicit spurious liquor to the deceased and he had consumed the said illicit liquor and had died because of the same. It is argued that the said persons were not implicated on the basis of investigation carried out by the police, but had been implicated on the basis of some investigation carried out by the complainant herself, at her own level and there is no tangible material to show as to how the complainant had connected the said persons with the selling of illicit and spurious liquor, more so, to the death of the husband of the complainant. It is further argued that in fact the said complainant-Kanta has given an affidavit (P-3 annexed with CRM-M-28150-2022) to the effect that she had got the said persons implicated on the basis of false rumors and on account of doubt and misunderstanding and that now Kanta (complainant) and her son are satisfied that the said persons had no concern with the death of the husband of the complainant. It is stated that the present petitioner sought to be implicated on the basis of disclosure statement of co-accused Naresh Kumar alias Pappi and no recovery of illicit liquor has been effected from the present petitioner. It is further stated that the co-accused persons, who were named in the FIR i.e., Saurab, Gaurav, Naresh Kumar alias Pappi and Pushpa, have been granted the concession of regular bail by this

Court vide orders dated 04.08.2022 and 09.08.2021, respectively.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has stated that the present petitioner is involved in several other cases and he has been implicated on the basis of disclosure statement of co-accused Naresh Kumar.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi Vs. State of U.P. and another**”, reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has gone through the paper-book.

The petitioner is in custody since 21.09.2021 and the charges have not been framed as yet and there are total 29 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. The petitioner is not named in the FIR and a perusal of the FIR would show that the death of the husband of the complainant had taken

place on 04.11.2020 and the FIR had been registered on 08.12.2020 i.e., after a delay of 34 days. Four accused persons i.e., Saurab, Gaurav, Naresh Kumar alias Pappi and Pushpa were named as accused in the FIR only on the basis of the investigation done by the complainant Kanta at her own level and not on the basis of any investigation carried out by the police, that too, after a delay of 34 days. The said four persons have already been granted the concession of regular bail. The co-accused Pushpa has been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 09.08.2021 passed in CRM-M-7094-2021 and other three co-accused, namely, Saurab, Gaurav and Naresh Kumar alias Pappi have been granted the concession of regular bail by this Court vide order dated 04.08.2022, passed in CRM-M-28150-2022 and CRM-M-6332-2022, respectively. In the said cases, reference has been made to an affidavit dated 19.03.2021 (Annexure P-3 in CRM-M-28150-2022), as per which, the complainant had stated that she had got the said four persons, who had been named in the FIR, implicated on the basis of false rumors and on account of doubt and misunderstanding and that now, she and her son are satisfied that the said persons were not involved in the death of her husband. The present petitioner is sought to be implicated on the basis of disclosure statement of one of those four persons i.e., co-accused Naresh Kumar alias Pappi.

Keeping in view the abovesaid facts and circumstances as well as in view of the law laid down in **Maulana Mohd. Amir Rashadi's case (supra)**, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the

satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

August 23, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No